Common Ground

Consultation Workbook

CWG

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Open Letter From The Constitutional Working Group

You may have heard about or been involved in past discussions concerning the future of the western territory after division on April 1, 1999 and implementation of the Aboriginal peoples' inherent right of self government through self government agreements. Many people have been asking:

What is a new constitution and why do we need one?

What will be the major changes to our current system of government at the territorial level?

How will Aboriginal self government and public government work together at the territorial level?

How will Aboriginal rights be respected along with the rights of all other western NWT residents?

How will Aboriginal governments be structured and how will they operate?

What will the relationship be between Aboriginal governments and the territorial government?

Since the spring of 1996, the Constitutional Working Group (CWG) has been working to develop ideas for a new constitution and system of government for the western territory. These ideas will help you understand how the new system of government would work at the territorial level and how it would recognize and help implement land claim, treaty and self government agreements. Our initial ideas were taken to the communities in March and April 1997, in the document *Partners in a New Beginning*. Many issues and concerns were raised, and numerous suggestions were made, during our first round of consultations.

Based upon what we heard, we have developed additional ideas for a new constitution and system of government. We are now beginning a second round of consultations. This is an opportunity for all western NWT residents to become involved in the design of a new constitution and new system of government for the western territory.

Now we have an opportunity, as western NWT residents, to shape our political future. We can make sure that the new government reflects and respects the values, traditions and rights of Aboriginal people, and includes the relationship between Aboriginal governments and public government at the territorial level.

We are looking for help from residents of the western NWT on deciding how the new western territory should be governed.

This workbook provides some background on the constitutional development process and Aboriginal rights. It also includes proposed approaches and models for a system of government that enables two types of government, Aboriginal self government and public government, to work together at the territorial level. A series of questions are provided for your review and comment.

We hope that you will join in to help build a more effective and meaningful constitution and system of government in the new western territory.

THE CONSTITUTIONAL WORKING GROUP

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Preface

We are living in a historic time. Great changes are taking place - changes that will be important for the way the western territory governs itself in the future. Two new territories will be established. Land claim, treaty and self government agreements will give Aboriginal peoples greater control over their lives. These profound changes, driven by recognition of Aboriginal peoples' inherent right of self government, division, and the desire of people in the western territory to design a government that reflects their cultures and values, will bring new challenges and opportunities for all of us.

For over 30 years, we have been working to bring people together to create new systems of government that will meet our needs. We have come a long way. We are continuing to build our future on common ground that includes both Aboriginal and territorial governments. Now we must go further - **we must work together to shape a government at the territorial level that will work for everyone in the west and represent western territorial interests at the national level.** It's time to share our ideas and opinions.

How the territorial government and Aboriginal governments could work together is the key question to be answered by a new constitution and system of government for the western territory. Consultations have shown that western NWT residents have diverse views on this question.

Another challenge will be to illustrate how a unique form of territorial government, which recognizes and helps to implement Aboriginal peoples' inherent right of self government, can also incorporate features of existing provincial governments and Canadian parliamentary traditions.

The CWG is presenting two approaches and four models for the development of a new constitution and system of government for your review and comment. No decisions have been made yet on the type of government system the new western territory will have. You may suggest other approaches and models which the CWG should consider.

Everyone's views and opinions are very important. Please stay involved and help us develop a new constitution and system of government which reflects the ideas of all western NWT residents. Following consultations at the community and regional levels, a constitutional conference is planned to consider a revised constitutional package.

What is the CWG?

The CWG is composed of Western Ministers from the territorial government, members from the Western Caucus of the Legislative Assembly, and western Aboriginal leaders, or their representatives, selected by the Aboriginal Summit. Representatives of the Western Caucus of the NWT Association of Municipalities, the Status of Women Council of the NWT, the Native Women's Association of the NWT are *ex officio* members. The federal government also fully participates in CWG meetings and the development of constitutional proposals.

To date, the Deh Cho First Nations have chosen not to participate in the CWG. However, they are participating in this consultation process. The Deh Cho First Nations are currently engaged in exploratory talks with the federal government regarding their outstanding interests.

How To Use This Workbook

This workbook has been developed to assist western NWT residents to provide their views on the CWG's proposed approaches and models for developing a new constitution and a system of government at the territorial level. This workbook has six main sections.

SECTION 1 provides background information on the history of constitutional development and Aboriginal rights issues in the western territory. It also introduces the CWG and it provides information on past and current consultation processes.

SECTION 2 describes the key issues that will need to be considered in recognizing Aboriginal rights in the western territory and how they relate to the development of a new constitution and a new territorial government.

SECTION 3 provides an explanation of current realities of the territorial government and emerging Aboriginal governments, and the status of self government negotiations between the Aboriginal peoples and the federal and territorial governments.

SECTION 4 explains the Government to Government Approach and presents a model for how Aboriginal and public government could agree to work together, using intergovernmental arrangements and agreements to enhance cooperation, coordination and consultation.

SECTION 5 explains the Combined Government Approach and presents three models on how Aboriginal governments and public government could agree to work together within a single combined territorial government.

SECTION 6 outlines the opportunities for western NWT residents to get involved in the process.

If you are using the workbook in a community consultation workshop or meeting, your facilitator will help you to understand and complete the workbook. If you decide to use the workbook on your own, please remove the questionnaire section, and send your responses to the CWG office.

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SECTION 1

CONSTITUTIONAL DEVELOPMENT AND ABORIGINAL RIGHTS IN THE WESTERN NWT

PAST AND PRESENT

For years, western NWT residents have talked about developing a new constitution and system of government for the western territory. There are many reasons why western NWT residents want to take this step. Some of these reasons are:

- a desire to create a system of territorial government which reflects their cultures and values while continuing to build a significant presence among provinces and territories in Canada;
- a desire for the territorial government and Aboriginal governments to work together at the territorial level;
- the need to deal with the effects on the present structure of the territorial government after division and the formation of the Nunavut Territory on April 1, 1999;
- the federal government's willingness to participate in the development of a new constitution for the western territory;
- the federal and territorial governments recognition of the Aboriginal peoples' inherent right of self government; and
- the federal and territorial governments commitments to negotiating Aboriginal self government agreements.

The process for the development of a new constitution and system of government involves two main tasks:

- the development of a proposal for a revised federal Act to replace or substantially revise the existing *Northwest Territories Act*; and
- it may also require the development of a Companion Self Government Agreement (CSGA) to reflect elements of the new constitution that are the expression of Aboriginal peoples' inherent right of self government at the territorial level.

A Political Accord, addressing the transition phase following division, may be needed. A Political Accord is a commitment to ensure that all parties will continue to sustain efforts towards the redesign of the institution of government in the western territory after division in 1999.

The Constitutional Working Group (CWG) is taking the lead role in developing proposals for a new constitution, while the Aboriginal Summit is taking the lead role on the CSGA.

The federal government is involved in the process of developing a new constitution. The federal government's interest is to work with the people of the western NWT to develop legislation to implement aboriginal self government agreements, land claim agreements and a new territorial constitution.

What is a Companion Self Government Agreement?

The Aboriginal peoples and the federal and territorial governments could negotiate a separate agreement, called a Companion Self Government Agreement (CSGA), to guarantee that Aboriginal rights reflected in the constitution will not be amended without the consent of the Aboriginal peoples. The new western constitution may recognize the land claim, treaty and self government rights of Aboriginal peoples. Provisions already in the *Canadian Constitution* that recognize and protect Aboriginal rights will also be used to embrace the right of self government. A CSGA would confirm that the Aboriginal peoples have been consulted and agree to the expression of these rights in the new constitution. Aboriginal people will have to approve a CSGA through a vote.

THE CWG'S PRINCIPLES AND OBJECTIVES

The CWG is attempting to establish an innovative constitution and system of government for a western territory based on guiding principles and objectives. The CWG set out principles and objectives in *Partners in a New Beginning* which was released in October 1996. They have been revised to reflect input and issues raised in ongoing discussions between CWG participants.

PRINCIPLES

- the new system of government will represent and serve all residents;
- the western governments will include Aboriginal government institutions as well as public government institutions;
- there will be community, regional and territorial government institutions;
- the new constitution will recognize, affirm and accommodate Aboriginal and treaty rights, including modern treaties and Aboriginal peoples' inherent right of self government. The objective is to ensure Aboriginal participation in decision-making to the maximum extent possible with the ultimate goal of effective and accountable government for all;
- as a consequence of self government agreements, there will be a restructuring of power with a view to implementing the inherent right of Aboriginal self government and having authority exercised by the government best able to deliver a service most effectively and efficiently;
- the new constitution will be consistent with the *Constitution of Canada*, including the *Charter of Rights and Freedoms*; and
- the new system of territorial government will recognize and help to facilitate the implementation of negotiated Aboriginal self government agreements.

OBJECTIVES

- the constitution should be consistent with fundamental democratic principles and Aboriginal peoples' inherent right of self government;
- democratic principles include representation by population, taking into account communities of interest and geographic circumstances;
- Aboriginal participation in the territorial government would be the expression of the inherent right at the territorial level;
- the constitution should allow public government and Aboriginal self government to work together through coordination, cooperation and consultation at the territorial level consistent with:
  - the *Constitution of Canada*, including the *Charter of Rights and Freedoms*;
  - constitutionally protected treaties and land claims;
  - self government agreements with Aboriginal peoples; and
  - processes established between Aboriginal peoples and Canada to negotiate such agreements; and
- the new constitution should establish a territorial government which could legitimately assume province-like powers, subject to land claim, treaty and self government agreements, leaving the issue of provincehood to the future.

THE ABORIGINAL SUMMIT'S PRINCIPLES ON THE INHERENT RIGHT OF SELF GOVERNMENT

The federal and territorial governments are currently negotiating self government agreements with Aboriginal organizations. On January 21, 1998, the Aboriginal Summit (composed of leaders representing the western Aboriginal groups), presented to the Honourable Jane Stewart, Minister of Indian Affairs and Northern Development, the following principles which it considers to be the foundation of negotiating and implementing the inherent right of self government in the western NWT.

1. Aboriginal Peoples in the western NWT have an inherent right of self government, a right which is affirmed and protected by section 35 of the *Constitution Act, 1982*.
2. Aboriginal Peoples in the western NWT vest their inherent right of self government with an Aboriginal government, including the authority to negotiate agreements to implement the right. Aboriginal peoples will define who their governments are.
3. The federal and territorial governments, and/or their successors, recognize the Aboriginal governments designated by Aboriginal Peoples in the western NWT to hold their inherent right and to negotiate agreements for its implementation.
4. Self government agreements will empower Aboriginal governments in the western NWT with the jurisdiction and authority to safeguard and develop their lands and resources, their languages, cultures and traditions and to ensure the integrity of their societies, without defining the inherent Aboriginal right of self government in law.

5. The signing, ratification and enabling legislation of self government agreements will bring into force the recognition and affirmation of the inherent Aboriginal right of self government as contained in section 35 of the *Constitution Act, 1982*. The agreements will recognize and affirm Aboriginal governments in the western NWT as legitimate governments, and give them legal standing.

6. Aboriginal governments in the western NWT may enter into negotiations with other governments to conclude intergovernmental arrangements.

7. Aboriginal governments in the western NWT have the authority to implement the inherent Aboriginal right of self government, in a manner equitable to Aboriginal governments elsewhere in Canada.

THE FEDERAL GOVERNMENT'S INHERENT RIGHT POLICY

The federal government's policy for the implementation of the inherent right of self government states that:

"The Government of Canada recognizes the inherent right of self government as an existing Aboriginal right under section 35 of the Constitution Act, 1982. It recognizes, as well, that the inherent right may find expression in the treaties, and in the context of the Crown's relationship with treaty First Nations. Recognition of the inherent right is based on the view that the Aboriginal peoples of Canada have the right to govern themselves in relation to matters that are internal to their communities, integral to their unique cultures, identities, traditions, languages and institutions, and with respect to their special relationship to their land and resources."

In addition, the federal government's policy states that:

"In the federal government's view, the self government aspirations of Aboriginal peoples in the NWT can be addressed by providing specific guarantees within public government institutions. The creation of Aboriginal institutions to exercise certain authorities may also be a useful approach."

The federal and territorial governments and the Aboriginal Summit are currently engaged in a dialogue on how best to implement the Aboriginal inherent right of self government in the western NWT.

The Charter of Rights

The *Charter of Rights* will apply to Aboriginal governments and peoples as it does to all other parts of Canada. The current provisions of the *Charter* that respect the unique Aboriginal and treaty rights of Aboriginal peoples will continue to apply.

THE CWG'S CONSULTATIONS ON PARTNERS

In October 1996, the CWG released *Partners in a New Beginning*. This report described constitutional proposals for how the new western territory could govern itself after division and how Aboriginal rights and interests could be protected in a CSGA. The report also provided plans for getting opinions on a preferred approach and approval of a new constitution through a voting process. Every vote will have equal value. Aboriginal residents may be asked to vote on a CSGA. Parliament will be asked to pass a revised *Northwest Territories Act* for the western territory.

The Plebiscite

After further consultations and a constitutional conference, western NWT residents will be asked to vote in a plebiscite on a preferred approach and model of government. The current territorial *Plebiscite Act* requires a minimum residency of three years. However, no determination on residency requirements has been made and the three year residency requirement could be changed. Under the Act, the result of a plebiscite is not legally binding, but is an expression of the political will of the western NWT residents.

The *Partners* report was used as the basis for the CWG's consultations with western NWT communities and the federal government in March and April of 1997.

FINDINGS OF THE PARTNERS CONSULTATIONS

The results of the *Partners* consultations, published in the Round One Summary Report released in July 1997, were very important for the CWG.

Residents said that:

- the principles and objectives for developing a new constitution were generally acceptable;
- the focus should be on developing the system of government which is best suited for governing at the territorial level;
- the rights and interests of all western NWT residents must be recognized;
- the draft constitution must be put to a vote before it is approved; some residents said that voters must have lived in the western territory for at least one year, others suggested five years and some suggested a ten year residency requirement in order to cast a ballot; and the decision to approve the constitution must be made on the basis of one person, one vote;
- constitutional development and progress on land claim, treaties and Aboriginal self government negotiations needs to be made at the same time;
- a new constitution should give consideration to the interests of tax-based municipalities and women;
- progress needs to be made on formula financing and the division of assets and liabilities between the western and eastern territories before decisions are made; and
- they needed more time and information to make better decisions.

Residents asked the CWG for:

- more information to help them decide whether to accept the current system of government or to develop a new constitution and system;
- more choices for how Aboriginal governments and public government could work together;
- more choices that would take into account the existence of Aboriginal governments at the community and regional levels and the impact that land claim, treaty and self government agreements will have on the government of the western territory;
- more choices that will ensure that all residents are represented in the new system of government;
- opportunities to strengthen partnerships among peoples and governments; and
- information on the role residents will have on accepting or rejecting the proposed constitution and system of government.

The federal government and other organizations also provided their input. Their comments included:

- federal government objectives for an efficient and fiscally responsible territorial government which will be a strong voice for the western territory, a government for all residents, Aboriginal and non-Aboriginal, and consistent with the *Constitution of Canada* and values and traditions of Canada;
- federal government concerns over provisions related to Aboriginal representation and a potential Aboriginal veto of legislation, which may contravene the *Charter of Rights and Freedoms*;
- federal government concerns about the western territory's Legislative Assembly making laws on matters currently under federal jurisdiction, including land claim settlements and federal lands and resources;
- tax-based municipalities concerns that municipal governments will not have the same status or protection as community governments resulting from self government agreements, and that non-Aboriginal residents may not have the same access to community government programs and services as Aboriginal residents, or the ability to run and vote in community elections;
- recommendations from the Status of Women Council of the NWT and Native Women's Association of the NWT that women should have 50% of the seats within a Legislative Assembly and the constitution should include a social charter; and
- other organizations indicated they wanted to retain the *status quo*.

THE CWG'S CONSULTATIONS ON FINDING COMMON GROUND

Based upon the feedback received in the *Partners* consultations, the CWG has developed two approaches and four models for creating a new constitution and a system of government for the western territory. The proposed approaches and models are examples for these consultations.

The consultations have three primary objectives:

- to obtain preferences on an approach and model from the residents of the western NWT;
- to make sure that the process responds to concerns raised during the *Partners* consultations; and
- to get comments from residents on how to complete the constitutional process.

All of the input received will be important in developing a proposal for a new constitution and system of government for consideration at a constitutional conference. Aboriginal leaders may hold additional meetings on the CSGA. A review of the CSGA will occur at the Aboriginal Forum.

The CWG does not have responsibility for developing consensus on the name for a new western territory. The Western Caucus of the Legislative Assembly has requested that western NWT residents submit ideas for naming the western territory. The Aboriginal Summit has also expressed an interest in naming the territory. The Western Caucus wants to present up to 3 of the most popular suggestions for a vote by western residents to determine the name. If suggestions are made during these consultations, all information will be recorded and passed on to the Western Caucus.

SECTION 2

KEY CONSTITUTIONAL ISSUES

There are many issues which must be considered in the development of a new constitution for the western territory. These issues include:

- the recognition and implementation of the inherent right of self government;
- the relationship between the territorial government and Aboriginal governments;
- the role and perspective of the federal government;
- the workability of the new system of government; and
- the affordability of the new system of government.

An overview of these issues is provided below.

INHERENT RIGHT OF SELF GOVERNMENT

It will be important for us to think about some basic "realities" when we consider the choices for a new constitution and system of government. For example, a new constitution and system of government must take into account the recognition of the Aboriginal peoples' inherent right of self government, the *Constitution of Canada* and Canadian parliamentary traditions.

More specifically, a new constitution and system of government must take into account that:

- a public system of government will continue to provide programs and services for all western NWT residents;
- a public system of government will continue to take over province-like authorities from the federal government, subject to land claim, treaty and self government agreements;
- sections of land claim, treaty and self government agreements will be protected by the *Canadian Constitution*. These agreements cannot be changed without the consent of Aboriginal peoples;
- public government and Aboriginal governments will work out ways to implement the inherent right of self government and ensure that public and Aboriginal governments are workable and affordable.

There is recognition of public government at the territorial level through the *Northwest Territories Act*. This will continue into the future. The problem today is the lack of recognition of the political and legal rights of Aboriginal governments. In the future self government agreements will bring political and legal recognition of Aboriginal governments.

A new constitution should outline how the Aboriginal peoples' inherent right of self government is recognized and implemented at the territorial level.

ABORIGINAL GOVERNMENTS AND THE TERRITORIAL GOVERNMENT

A new constitution and system of government should provide for relationships between Aboriginal governments and the new territorial government. These relationships could include:

- Aboriginal governments assuming responsibility for many programs and services now delivered directly by the Government of the Northwest Territories (GNWT) or by local governments created by the GNWT;
- financial agreements for the provision of federal and/or territorial government funding to Aboriginal governments;
- the authority of Aboriginal governments to generate their own revenues; and
- intergovernmental agreements for the coordination and cooperation between Aboriginal governments and the territorial government to implement the inherent right of self government.

Commitments to Negotiate Aboriginal Self Government

The Gwich'in and the Sahtu Dene and Métis Comprehensive Land Claim Agreements contain a commitment for the federal and territorial governments to negotiate Aboriginal self government agreements with regional Aboriginal organizations.

The Gwich'in Agreement states that:

"5.1.1 Government shall enter into negotiations with the Gwich'in with a view to concluding agreements on self government appropriate to the unique circumstances of the Gwich'in and in conformity with the *Constitution of Canada*.

5.1. The objectives of self government agreements shall be to describe the nature, character and extent of self government, the relationship between government and Gwich'in institutions and to accommodate Gwich'in self government within the framework of public government."

The federal government has concluded self government agreements with the four Yukon First Nations and has reached a land claim and self government agreement-in-principle with the Nisga'a. Negotiators for the Aboriginal peoples in the NWT are seeking to attain at least the same levels of rights and authority as outlined in these agreements. (For additional information on existing self government agreements, please refer to the summary provided Appendix 1 and to the federal Inherent Right Policy).

ROLE AND PERSPECTIVE OF THE FEDERAL GOVERNMENT

An Act of Parliament is required to establish the new constitution. The federal government wants to ensure that a new constitution will incorporate Canadian parliamentary traditions and establish the basis for a strong western territory which governs itself and represents its interests at the national level. The federal government wants to ensure that a new constitution will not prevent further transfers of province-like authorities and the capacity of the territory to continue to evolve toward provincial status as a long term objective. In addition to supporting the development of a new constitution and system of government at the territorial level, the federal government is also an essential party to any CSGA.

The federal government will give particular attention to the following elements of a new constitution and system of government:

- how values and traditions of Canada will be upheld;
- the flexibility of government institutions;
- how Members of the Legislative Assembly will be chosen;
- how the proposed Legislative Assembly will make decisions;
- the kinds of decisions the Legislative Assembly will make; and
- how the new constitution and a CSGA will address the inherent right of self government.

The federal government says that the new constitution must be consistent with the *Constitution of Canada*, including the *Charter of Rights and Freedoms*. The federal government has also stated that it will not support any models which provide for dual votes for Aboriginal peoples or for an Aboriginal veto in the Legislative Assembly.

The Federal Government's Response to the Final Report of the Royal Commission on Aboriginal Peoples

The federal government, in its response to the final report of the Royal Commission on Aboriginal Peoples, states that "In the western NWT, the completion of land claims and self government agreements with Aboriginal groups will remain a priority. The federal government will continue to support the unique dialogue between Aboriginal and non-Aboriginal people to define a new constitution for the western NWT. One of the major issues will be to explore how public government in the NWT can accommodate the inherent right of self government and the self government aspirations of northern Aboriginal people. A parallel challenge will be to ensure that Aboriginal people and communities share in the wealth and benefits expected to flow from major resource development in the NWT."

WORKABILITY OF THE NEW SYSTEM OF GOVERNMENT

The territorial government will continue to exist under the new constitution. There will be Aboriginal governments at the regional and community levels. Taxed based municipalities, and possibly regional governments, will also continue to exist and function under a variety of forms. There will be cases where these governments share the same authority. For example, both the territorial and Aboriginal governments will likely have authority over education and the provision of some social services. There also may be examples where more than one government will have authority to make decisions on the terms and conditions of resource development proposals.

The new system of territorial government will have to be workable. This means that there will be a need for cooperation, coordination and consultation between the territorial government and Aboriginal governments in developing legislation, regulations, policies and standards. This will be necessary to reduce overlap, duplication in the delivery of programs and services and to take advantage of economies of scale.

AFFORDABILITY OF THE NEW SYSTEM OF GOVERNMENT

Changes in the way the western NWT governs itself will also alter the financial structures of government. New revenue sources for governments could include royalty sharing, the transfer of authorities and resources from the federal government, and revenues from new economic development activities. Land claim and treaty agreements will also inject new monies within the western economy. A small population and a large geographic base will continue to challenge efficiencies in providing programs and services.

The governments will have to be affordable. The cost of running the public government's legislative and administrative institutions cannot undermine the delivery of programs and services. These same principles will also apply to Aboriginal, regional and municipal governments. In some instances, the delivery of programs and services at the local level could prove to be more efficient and effective. There may be a need for government in the western NWT to look for additional sources of revenue. It is anticipated that the federal and territorial governments will continue to provide reasonable transitional and ongoing funding to implement a new constitution and self government agreements.

SECTION 3

REALITIES OF THE PRESENT AND EMERGING SYSTEMS OF GOVERNMENT

Before we look at the two approaches and models for a new constitution and system of government, we should look at where we are today.

THE TERRITORIAL GOVERNMENT

Over the past 30 years a system of representative and responsible government has evolved in the NWT. All NWT residents elect Members of the Legislature to represent them. The MLAs choose the Premier and the Ministers. The Premier and the Ministers are accountable to the Legislative Assembly. The Legislative Assembly makes laws and approves a budget for the Premier, Ministers and territorial government to administer.

The foundation of the territorial system of government is a combination of the *Constitution of Canada*, which established individual rights and freedoms through the *Charter of Rights*, and the *Northwest Territories Act*, which sets out the public system of government at the territorial level and its authority to create regional and community governments.

While the NWT is not a province, the system of government is similar to the provinces. Programs and services are administered by government departments and delivered at the regional and community levels. Others are delivered by boards and agencies, municipal governments and through agreements with some Aboriginal organizations.

ABORIGINAL SELF GOVERNMENTS

Aboriginal peoples can trace their systems of government back to the beginnings of their oral history. However, after European settlers came to this country and established their governments, Aboriginal governments were pushed aside. In the past few years, the federal government has recognized the right of Aboriginal people to govern themselves and decide on matters affecting their communities. Aboriginal peoples will shape their own forms of government to suit their particular historical, cultural, political and economic circumstances. At present, the Aboriginal organizations in the NWT are negotiating the details of self government with the federal and territorial governments. Examples of areas being negotiated include education, language and culture, community justice and policing services, health care and social services, housing, property rights, the enforcement of Aboriginal laws and adoption and child welfare. Aboriginal peoples will shape their own forms of government to suit their particular historical, cultural, political and economic circumstances. Some Aboriginal governments may provide programs and services to non-Aboriginal people. In other instances, Aboriginal governments will combine features of both Aboriginal self government and public government institutions.

In the NWT self government negotiations are at various stages. The following is a brief overview of the current situation.

Gwich'in Tribal Council/Inuvialuit Regional Corporation

In the Beaufort/Delta region, the Gwich'in and Inuvialuit have a settled land claim agreement and are negotiating a regional self government proposal which combines features of both public and Aboriginal self government at the regional and community level. The scope of negotiations ranges from the establishment of governing structures for both public and Aboriginal institutions; jurisdiction over education, training, health and social services, child welfare and housing; administration of justice; management of lands and resources; raising revenues, economic development and ratification of a self government agreement.

Deh Cho First Nations

The Deh Cho Dene and Métis have made a proposal to the federal government to negotiate the establishment of a government in the Deh Cho based on Dene values and customs, and including all residents. On February 20, 1998, the Minister of Indian Affairs and Northern Development and the Deh Cho First Nations Grand Chief announced the appointment of a ministerial envoy to discuss outstanding land and governance matters with the Deh Cho First Nations. The envoy and Deh Cho Chiefs continue to meet.

Akaitcho Territory Tribal Council

The Akaitcho First Nations have extensively explored their options with the federal government and are now deciding whether to choose the Comprehensive Claim/Self Government approach or to continue to seek Treaty Land Entitlement through Treaty 8.

Salt River First Nation

The Salt River First Nation (Fort Smith Dene) are negotiating a Treaty Land Entitlement settlement under the federal Specific Claims Policy. A protocol agreement has been signed which commits Canada to negotiate Indian reserve lands and economic benefits based on Treaty 8. A final agreement is expected next year. Once a treaty land entitlement agreement has been negotiated, DIAND has agreed to negotiate the creation of a new Band with the Smith's Landing group of the SRFN, to be based at Smith's Landing (Fort Fitzgerald). The Salt River First Nation retains the option of re-joining the Akaitcho Territory.

South Slave Métis Tribal Council

The South Slave Métis are in Phase One of negotiations which are focusing on lands and resources; economic benefits; hunting, trapping and fishing rights; and transfer of some programs and services. Self-government issues are under discussion and will be dealt with in Phase Two negotiations.

Dogrib Treaty 11 Council

The Dogrib Treaty 11 Council is negotiating a combined land claim and self government agreement. Negotiations have been based on their rights as defined by Treaty 11. The Dogrib proposal also focuses on assuming jurisdiction for many of the programs and services which the GNWT currently delivers.

North Slave Metis Alliance

North Slave Metis Alliance has begun talks with Federal Government officials and have been encouraged to pursue the possibility of entering into negotiations for a claim in the North Slave Region through existing land claim processes.

Sahtu Secretariat Incorporated

In the Sahtu, the land claim agreement established three districts and provided for the negotiation of community self government. In the district of Deline a process and schedule agreement has been initialed and self government negotiations are underway. Self government discussions have not begin in the other districts.

THE CURRENT LANDSCAPE

The following diagram reflects the way that government institutions are currently structured and is the basis for constitutional development for a new western territory.

ABORIGINAL AND PUBLIC GOVERNMENT

A picture of the existing framework which provides the basis of constitutional development for a new western territory

ABORIGINAL RIGHTS
CANADA
CONSTITUTION OF CANADA
Section 35
Constitution Act 1871
Treaties, Land Claim Agreements, Self Government Agreements
NWT Act
ABORIGINAL GOVERNMENTS
PUBLIC GOVERNMENT
TERRITORIAL
REGIONAL
COMMUNITY
Aboriginal Summit
Involved in self government policy discussions and CWG discussions
Tribal Councils
Delivery of Programs and Services through Management bodies (i.e. Boards)
First Nation Councils, Métis Locals & Inuvialuit Community Corporations
INTERGOVERNMENTAL AGREEMENTS AND ARRANGEMENTS
Formal means for consultation, coordination and cooperation on setting common standards, financing program and service delivery and legislation
Premier
Cabinet
Provincial like powers
Delivery of Programs and Services (i.e. Boards)
Hamlet, Town, Village and City Councils

Inuvialuit Settlement Region
Sahtu Settlement Area
Gwich'in Settlement Area
North Slave, South Slave and Deh Cho Regions
Sachs Harbour
Tuktoyaktuk
Aklavik
Inuvik
Ft. McPherson
Holman
Paulatuk
Colville Lake
Ft. Good Hope
Norman Wells
Tulita
Deline
Wrigley
Rae Lakes
Snare Lakes
Wha Ti
Rae Edzo
Yellowknife
Ndilo
Dettah
Lutselk'e
Ft Resolution
Ft. Smith
Ft. Simpson
Jean Marie River
Nahanni Butte
Ft. Liard
Trout Lake
Ft. Providence
Kakisa
Hay River
Enterprise
Hay River Reserve

WHY A NEW CONSTITUTION?

Historic changes are occurring in the Northwest Territories. In the near future, two new territories will be established. Land claim, treaty and self government agreements will give Aboriginal people greater control of their lands, affairs and funds. However, at present, there are no formal mechanisms for linking the public government at the territorial level with the emerging Aboriginal governments. The relationship between these governments has not been defined nor has the level and degree of cooperation, coordination and consultation on laws, services, human or financial resources and relationships with institutions and businesses outside the western territory.

The Constitutional Working Group is asking you to look at two approaches and four models of government which would address how the Aboriginal and territorial governments could work. For a comparison of the two approaches, please refer to the table provided in Appendix 2.

Section 4 outlines a Government to Government approach and model where intergovernmental arrangements and agreements are the primary instruments to help implement the inherent right of self government at the territorial level and to make governments efficient, workable and affordable.

Section 5 outlines a Combined Government approach and three models suggest significant changes to the current structure and operation of the Legislative Assembly and Cabinet. In this approach, Aboriginal and public government would come together to make decisions which would affect Aboriginal affairs, lands and funds.

What is a Constitution?

A constitution sets out how a government works, how people elect their representatives, how a government makes decisions, and the kinds of decisions a government can make. The western territory's constitution is currently an act of Parliament, the *Northwest Territories Act*. The new constitution, or the revised *Northwest Territories Act*, will be subject to treaty, land claim and Aboriginal self government agreements.

SECTION 4

GOVERNMENT TO GOVERNMENT

During the first round of consultations some people suggested that the new western territory retain the existing *Northwest Territories Act* and keep existing government structures. However, this is not entirely possible because of the development of Aboriginal governments. These new structures will result in fundamental changes of government institutions at the regional and community levels and corresponding changes at the territorial level. The Government to Government approach retains a model of government similar to the existing structures while, at the same time, recognizing and accommodating Aboriginal governments. The Legislative Assembly will have no special legislative powers in relation to Aboriginal lands and affairs, and there will be no formal sharing of legislative powers or executive powers with Aboriginal governments reflected in the new constitution.

The Government to Government approach focuses on enhancing consultation, coordination and cooperation among the territorial government and Aboriginal governments. The goal is for Aboriginal governments and the territorial government to:

- consult with each other regularly to make this system work successfully;
- consult with each other to make changes in their roles and responsibilities;
- coordinate with each other to avoid gaps in service and prevent unnecessary duplication; and
- cooperate with each other to make the best use of their finances and resources.

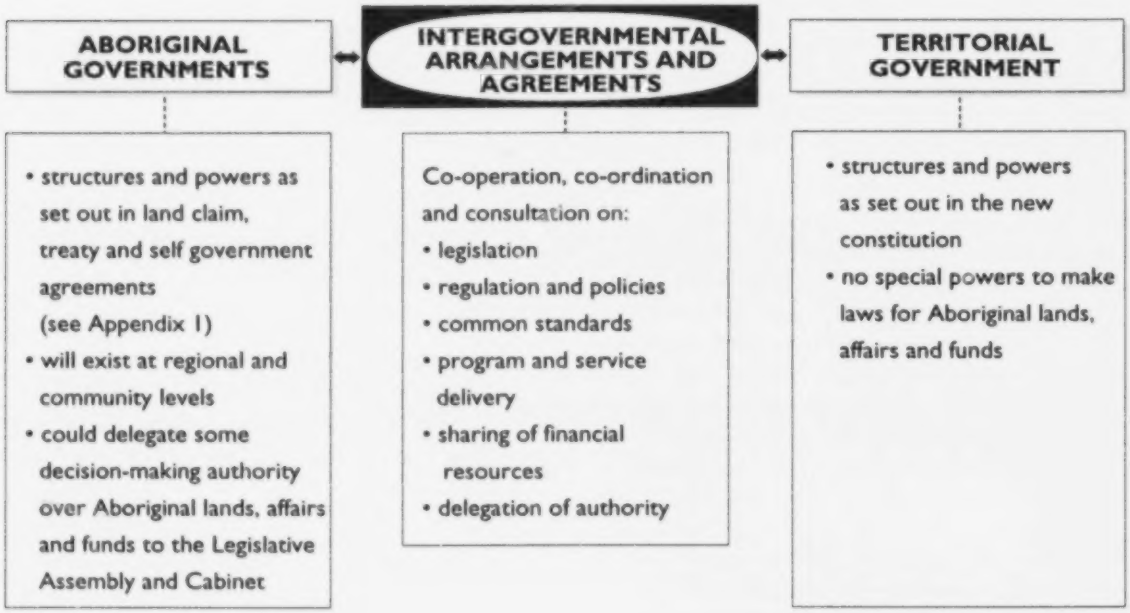
Intergovernmental arrangements would clarify the roles and responsibilities of the territorial government and Aboriginal governments. In forming intergovernmental agreements, Aboriginal peoples and their governments would be able to:

- use the rights and mechanisms established in land claim, treaty and Aboriginal self government agreements to establish their responsibilities and determine their relationships with the territorial government; and
- ask the new constitution to further clarify their relationships with the territorial government and, possibly, with other Aboriginal governments.

In addition, the new constitution may provide for guaranteed representation for Aboriginal people within the Legislative Assembly.

A CSGA would protect those provisions in a new constitution which provide for cooperation, coordination and consultation processes and structures between the territorial government and Aboriginal governments. The CSGA will also provide for guaranteed representation and protect consent regarding future changes to the *Northwest Territories Act* that relate to the government to government relationship.

GOVERNMENT TO GOVERNMENT APPROACH


ABORIGINAL GOVERNMENTS
INTERGOVERNMENTAL ARRANGEMENTS AND AGREEMENTS
TERRITORIAL GOVERNMENT
• structures and powers as set out in land claim, treaty and self government agreements (see Appendix 1)
• will exist at regional and community levels
• could delegate some decision-making authority over Aboriginal lands, affairs and funds to the Legislative Assembly and Cabinet
Co-operation, co-ordination and consultation on:
• legislation
• regulation and policies
• common standards
• program and service delivery
• sharing of financial resources
• delegation of authority
• structures and powers as set out in the new constitution
• no special powers to make laws for Aboriginal lands, affairs and funds

MODEL 1 - GOVERNMENT TO GOVERNMENT MODEL

It is possible that the *Northwest Territories Act* could remain essentially the same with minor changes to modernize the language, as was done with the *Nunavut Act*. However, retaining the *NWT Act* does not mean retaining the *status quo* (keeping things the way they are now). The negotiation of self government agreements and the recognition of Aboriginal governments will result in fundamental changes in the way government works.

Model 1 takes these circumstances into account. The model assumes that the Legislative Assembly will have no special legislative powers in relation to Aboriginal lands, funds and affairs and there will be no formal sharing of legislative powers or executive powers with Aboriginal peoples or Aboriginal governments.

To the extent that there are partnerships, there may be a need to amend the *NWT Act* to introduce mechanisms for coordination, cooperation and consultation among the Aboriginal governments and public governments.

The Act may also be amended to provide for guaranteed representation for Aboriginal people in the Legislative Assembly, in the event of a significant shift in the composition of the western territory's population.

A CSGA may be needed to protect the guaranteed representation of Aboriginal people in the Legislative Assembly, and to protect the mechanisms for consultation, coordination and cooperation among governments.

Legislature and Cabinet Structure

- a single Legislative Assembly of 14 to 25 members;
- the option for guaranteed representation of Aboriginal people in the Legislative Assembly in the event of a significant change in the composition of the western territory's population;
- members will be elected to the Legislative Assembly in the same way MLAs are elected now;
- MLAs will elect a Speaker through convention;
- a Commissioner with largely symbolic powers;
- a Cabinet of MLAs to exercise the powers and duties of an executive branch;
- the Cabinet will be chosen based on evolving political practice and tradition; and
- there will be formal mechanisms requiring consultation, coordination and cooperation between Aboriginal governments and the territorial government, and among Aboriginal governments.

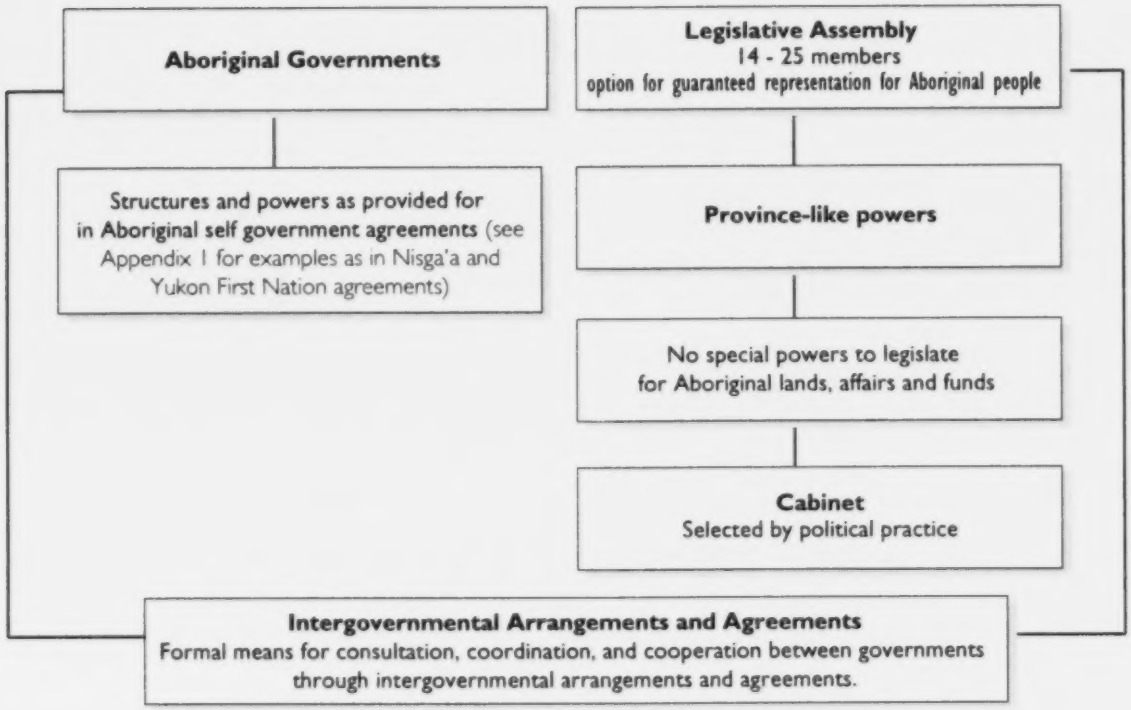
Decision-Making Scope and Power

- the Legislative Assembly may have law-making powers similar to a province, including future jurisdiction over non-renewable resources, subject to land claim, treaty and self government agreements;
- all legislation will be voted on by all members of the Legislative Assembly;
- the Legislative Assembly will have no legislative powers in relation to Aboriginal lands, affairs and funds; and
- a bill will become law if it is passed by a majority of the Legislative Assembly.

How Decisions Affect Aboriginal Governments, Land Claims, Treaties, and Federal and Community Governments

- Aboriginal peoples will negotiate self government arrangements at the community and regional levels;
- Aboriginal self government agreements will have a significant influence on the structures and powers of community and regional governments;
- none of the Legislative Assembly's laws can conflict with the *Constitution of Canada* or federal legislation;
- territorial legislation cannot change Aboriginal land claim, treaty and self government agreements; and
- self government agreements will contain provisions explaining the relationship between the Aboriginal, and federal and territorial legislation.

MODEL 1 - GOVERNMENT TO GOVERNMENT MODEL


Aboriginal Governments
Legislative Assembly
14 - 25 members
option for guaranteed representation for Aboriginal people
Structures and powers as provided for in Aboriginal self government agreements (see Appendix 1 for examples as in Nisga'a and Yukon First Nation agreements)
Province-like powers
No special powers to legislate for Aboriginal lands, affairs and funds
Cabinet
Selected by political practice
Intergovernmental Arrangements and Agreements
Formal means for consultation, coordination, and cooperation between governments through intergovernmental arrangements and agreements.

SECTION 5

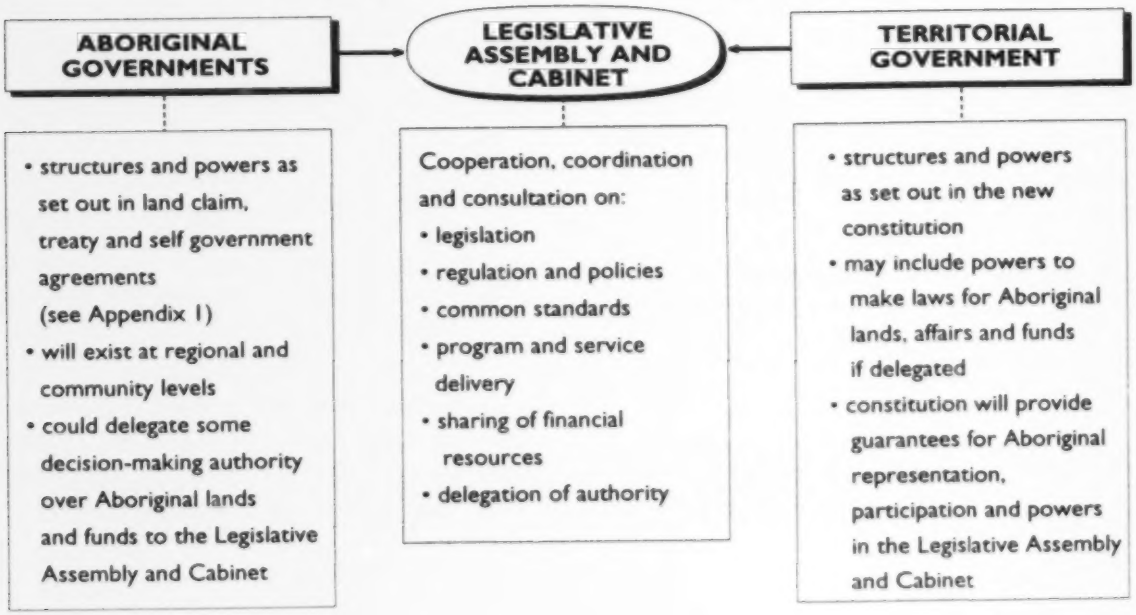
A COMBINED GOVERNMENT

In a Combined Government approach, Aboriginal governments and public government would agree to work together within a single combined territorial government. Residents of the western territory would be represented by both Aboriginal and non-Aboriginal members. Aboriginal people or Aboriginal governments would send members to represent them in the Legislative Assembly and Cabinet. The Legislative Assembly would enact laws with respect to all residents, lands and public funds. It might also have the authority to enact laws with respect to Aboriginal lands, affairs and funds.

Aboriginal peoples or their governments would have a clear and prominent role within the Legislative Assembly and Cabinet of the territorial government, by:

- guaranteed representation in both the Legislative Assembly and Cabinet; and
- forming a recognized group (second House or Caucus) which has a specific role in the Legislative Assembly and Cabinet.

A COMBINED GOVERNMENT APPROACH


ABORIGINAL GOVERNMENTS
LEGISLATIVE ASSEMBLY AND CABINET
TERRITORIAL GOVERNMENT
• structures and powers as set out in land claim, treaty and self government agreements (see Appendix 1)
• will exist at regional and community levels
• could delegate some decision-making authority over Aboriginal lands and funds to the Legislative Assembly and Cabinet
Cooperation, coordination and consultation on:
• legislation
• regulation and policies
• common standards
• program and service delivery
• sharing of financial resources
• delegation of authority
• structures and powers as set out in the new constitution
• may include powers to make laws for Aboriginal lands, affairs and funds if delegated
• constitution will provide guarantees for Aboriginal representation, participation and powers in the Legislative Assembly and Cabinet

There still will be a need for the territorial government and Aboriginal governments to consult with each other. In this approach there would be a need for consultation, coordination and cooperation within a single combined territorial government.

If this approach is adopted, it is likely that Aboriginal peoples and/or their governments would require that guarantees for representation, participation and authority in the Legislative Assembly and Cabinet will need to be protected by a CSGA.

MODEL 2 - ONE HOUSE MODEL

Model 2, introduced in the *Partners* report, is based on a partnership between Aboriginal peoples and non-Aboriginal peoples who will each select 9 members to sit in a One House Legislative Assembly.

The Legislative Assembly would be divided into an Aboriginal Caucus and a Northerners (Non-Aboriginal residents) Caucus. The Legislative Assembly may receive delegated authority from Aboriginal governments to legislate Aboriginal lands or affairs on their behalf. This would be subject to the terms of land claim, treaty and self government agreements. Model 2 will require a CSGA.

Legislature and Cabinet Structure

- a single Legislative Assembly with 18 members;
- representation in the Legislative Assembly is on the basis of representation by population;
- the Legislative Assembly will include two caucuses, an Aboriginal Caucus with 9 members and a Northerners Caucus with 9 members;
- the 9 members to the Aboriginal Caucus will be elected by the Aboriginal peoples as follows;
  - the Gwich'in, Sahtu, Deh Cho, Dogrib Treaty 11 and Treaty 8 Dene will each elect one member;
  - the Métis and the Inuvialuit will each elect two members; or
  - other methods could be used to define Aboriginal constituencies;
- non-Aboriginal people, being 50% of the population of the west, will elect nine members to the Northerners Caucus;
- any eligible voter can be nominated for election to either the Aboriginal or Northerners Caucus;
- a quorum of the Legislative Assembly is a majority of the Aboriginal Caucus and a majority of the Northerners Caucus sitting together;
- the Speaker will be selected from one Caucus and the Deputy Speaker from the other, by convention;
- a Commissioner with largely symbolic powers; and
- the Cabinet will be chosen by convention so that a minimum of 1/3 of its members are from each Caucus.

Decision-Making Scope and Power

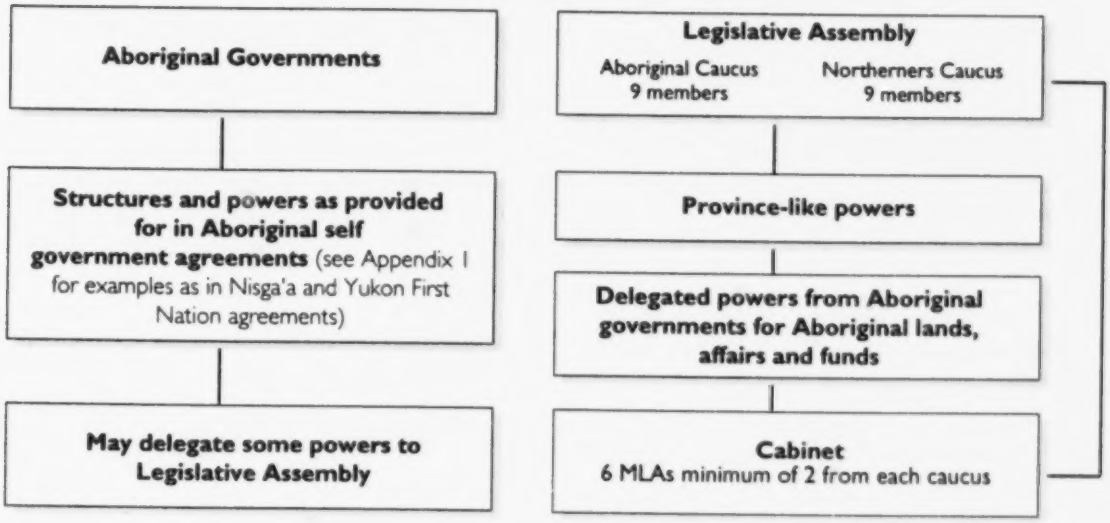
- the Legislative Assembly will have law-making powers similar to a province, including future jurisdiction over non-renewable resources, subject to land claim, treaty and self government agreements;

- the Legislative Assembly may receive delegated authority from Aboriginal governments to legislate, on their behalf, in relation to Aboriginal lands or affairs, subject to the terms of land claim, treaty and self government agreements;
- all legislation, including money bills, will be voted on by all members of the Legislative Assembly; and
- there are three options for passage of bills
- a majority of members present in each Caucus;
- a two-thirds majority of members present; or
- a simple majority of all members.

How Decisions Affect Governments, Land Claims, Treaties and Federal and Community Governments

- legislation in relation to Aboriginal lands and affairs will be exercised by Aboriginal self government institutions in the communities or regions as per self government agreements;
- Aboriginal governments may delegate some authorities to the Legislative Assembly to take advantage of efficiencies or economies of scale;
- none of the Legislative Assembly's laws can conflict with the *Constitution of Canada* or federal legislation;
- territorial legislation cannot change Aboriginal land claim, treaty and self government agreements;
- self government agreements will contain provisions explaining the relationship between Aboriginal and federal and territorial legislation; and
- self government agreements will have a significant influence on the structures and powers of community and regional governments.

MODEL 2 - A ONE HOUSE MODEL


Aboriginal Governments
Structures and powers as provided for in Aboriginal self government agreements (see Appendix I for examples as in Nisga'a and Yukon First Nation agreements)
May delegate some powers to Legislative Assembly
Legislative Assembly
Aboriginal Caucus 9 members
Northerners Caucus 9 members
Province-like powers
Delegated powers from Aboriginal governments for Aboriginal lands, affairs and funds
Cabinet
6 MLAs minimum of 2 from each caucus

MODEL 3 - A COMBINED HOUSE MODEL

Model 3, featured in the *Partners* report, includes a single Legislative Assembly with 22 members. There would be 2 sub-assemblies, composed of a General Assembly with 14 members and an Aboriginal Peoples' Assembly with 8 members. The General Assembly members would be elected like MLAs are currently elected. Each of the 8 Aboriginal Peoples in the western territory, in accordance with rules established by Aboriginal self governments, would elect or appoint Aboriginal Peoples' Assembly members.

The Legislative Assembly may have legislative powers in relation to Aboriginal lands and affairs subject to the terms of land claim, treaty and self government agreements. A bill would become law if it is passed by a majority of both the General Assembly and the Aboriginal Peoples' Assembly.

This model represents a partnership between Aboriginal peoples and non-Aboriginal peoples, a partnership between Aboriginal self governments and the territorial government, and among the Aboriginal self governments. Model 3 will require a CSGA.

Legislature and Cabinet Structure

- a single Legislative Assembly with 22 members;
- the Legislative Assembly will include two sub-assemblies, a General Assembly with 14 members and an Aboriginal Assembly with 8 members;
- the 14 members of the General Assembly will be elected in the same way MLAs are elected to the current Legislative Assembly;
- each of the 8 members of the Aboriginal Assembly will be elected or appointed by one of the 8 Aboriginal peoples in the western territory in accordance with rules established by the Aboriginal governments;
- a quorum of the Legislative Assembly is a majority of the General Assembly and a majority of the Aboriginal Peoples' Assembly sitting together;
- MLAs will elect a Speaker by convention;
- a Commissioner with largely symbolic powers;
- a Cabinet of at least 6 MLAs to exercise the powers and duties of an executive branch; and
- the Cabinet will be chosen based on evolving political practice and tradition, but by convention it must include a minimum of 4 members from the General Assembly and 2 members from the Aboriginal Assembly.

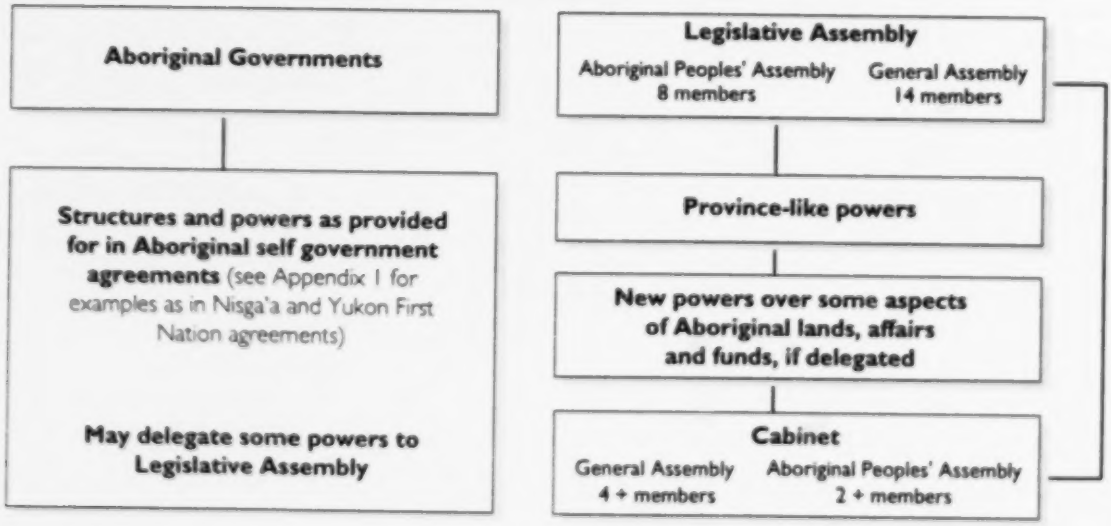
Decision Making Scope and Power

- the legislature will have law-making powers similar to a province, including future jurisdiction over non-renewable resources, subject to land claim, treaty and self government agreements;
- it may also have legislative powers in relation to Aboriginal lands and affairs subject to the terms of land claim, treaty and Aboriginal self government agreements;
- all legislation, including money bills, will be voted on by all members of the Legislative Assembly; and
- there are two options for passage of bills
  - a majority of members present from each Assembly; or
  - a simple majority of all members.

How Decisions Affect Aboriginal Governments, Land Claims, Treaties and Federal and Community Governments

- the legislature may have legislative powers in relation to Aboriginal lands and affairs;
- the purpose of these powers is to complement self government authorities;
- these powers would be subject to the terms of treaties, land claims and Aboriginal self government agreements;
- none of the Legislative Assembly's laws can conflict with the *Constitution of Canada* or federal legislation;
- where there is conflict between a federal and territorial law, the federal law will prevail;
- territorial legislation could not change Aboriginal land claim, treaty and self government agreements;
- self government agreements will contain provisions explaining the relationship between Aboriginal and federal and territorial legislation;
- self government agreements may have a significant influence on the structures and powers of community and regional governments.

MODEL 3 - A COMBINED HOUSE MODEL


Aboriginal Governments
Structures and powers as provided for in Aboriginal self government agreements (see Appendix I for examples as in Nisga'a and Yukon First Nation agreements)
May delegate some powers to Legislative Assembly
Legislative Assembly
Aboriginal Peoples' Assembly 8 members
General Assembly 14 members
Province-like powers
New powers over some aspects of Aboriginal lands, affairs and funds, if delegated
Cabinet
General Assembly 4 + members
Aboriginal Peoples' Assembly 2 + members

MODEL 4 - A TWO HOUSE MODEL

Model 4, amended following its introduction in the *Partners* report, would have an Aboriginal Peoples' Council and a Legislative Assembly. Members of the Legislative Assembly would be elected by all voters. The Aboriginal Peoples' Council would be elected by Aboriginal residents or appointed by Aboriginal governments. Model 4 will require a CSGA.

Legislature and Cabinet Structure

- the legislative branch will have two Houses, an Aboriginal Peoples' Council with 8 members, and a Legislative Assembly with a membership of 9 or more members elected by all;
- members of the Legislative Assembly will be elected by all voters, with all constituencies having roughly the same number of voters;
- several methods are suggested for electing or appointing members to the Aboriginal Peoples' Council, such as each of the 8 Aboriginal peoples electing a member (Aboriginal or non-Aboriginal), or all voters electing 8 members, but each must be Aboriginal;
- a Commissioner with largely symbolic powers; and
- the Cabinet will be chosen based on evolving political practices and traditions.

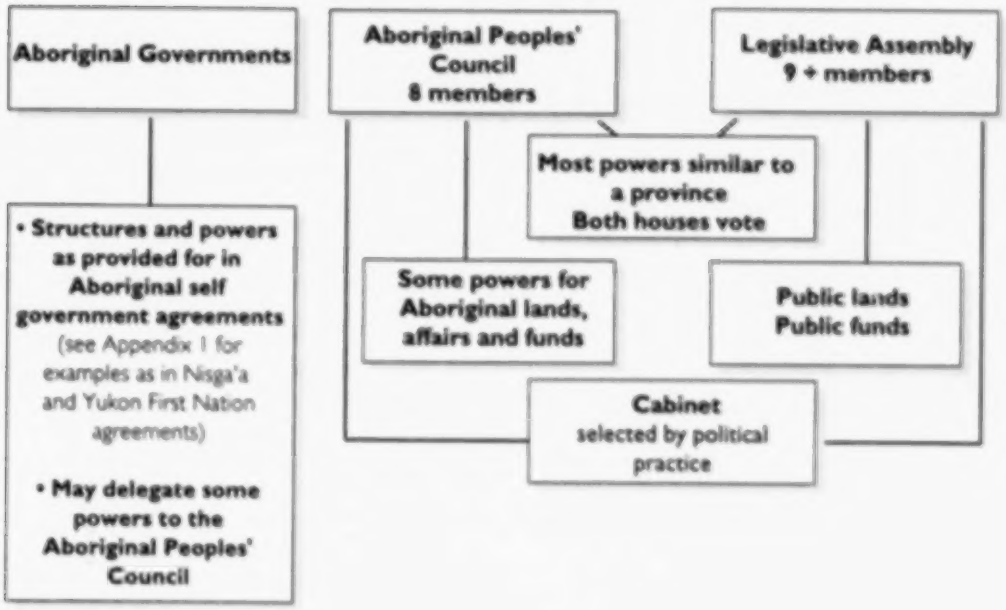
Decision-Making Scope and Power

- the legislative branch may have law-making powers similar to a province, including future jurisdiction over non-renewable resources, subject to land claim, treaty and self government agreements;
- there may also be a legislative power for Aboriginal affairs and lands, subject to land claim, treaty and self government agreements;
- the Legislative Assembly and the Aboriginal Peoples' Council will meet separately;
- both Houses will vote on most legislation, but in some cases, each House can pass laws independently;
- the Legislative Assembly will originate and pass laws with respect to money bills drawing on the public consolidated fund and public lands;
- the Aboriginal Peoples' Council will originate and pass laws with respect to Aboriginal lands and affairs (if there is such a power) and laws drawing on an Aboriginal Consolidated Fund (such a fund might exist for land claims implementation or for Aboriginal programs transferred from DIAND);
- all other general legislation could be introduced by either House and will need to be passed by both Houses to become law; or
- as an alternative, a general law passed by the Legislative Assembly and defeated in the Aboriginal Peoples' Council might require a joint sitting of the two Houses in which a simple majority of all members would pass the law.

How Decisions Affect Aboriginal Governments, Land Claims, Treaties, and Federal and Community Governments

- these powers would be subject to the terms of land claim, treaty and self government agreements;
- none of the Legislative Assembly's laws can conflict with the *Constitution of Canada* or federal legislation;
- territorial legislation cannot change land claim, treaty and self government agreements; and
- self government agreements will contain provisions explaining the relationship between the Aboriginal, federal and territorial legislation.

MODEL 4 - A TWO HOUSE MODEL


Aboriginal Governments
Aboriginal Peoples' Council 8 members
Legislative Assembly 9 + members
Most powers similar to a province Both houses vote
• Structures and powers as provided for in Aboriginal self government agreements (see Appendix 1 for examples as in Nisga'a and Yukon First Nation agreements)
• May delegate some powers to the Aboriginal Peoples' Council
Some powers for Aboriginal lands, affairs and funds
Public lands Public funds
Cabinet selected by political practice

SECTION 6

WORKING TOGETHER TO DEVELOP A NEW CONSTITUTION FOR THE WESTERN NWT

A new constitution for the western territory will influence the lives of all residents. Given this, all residents must have the opportunity to participate and contribute their comments and feedback. The timetable which follows outlines the consultation process for western constitutional development to 1999.

Attached is a questionnaire. Facilitators can provide information and help you with the questions during community workshops.

For further information, please contact us at the following:

Mail: The Constitutional Working Group, P.O. Box 2940, Yellowknife, NT, X1A 2R2
Telephone: (867) 920-8961
Fax: (867) 873-0167
Toll Free: 1-888-708-2942
E-mail: **consult@cwgcommonground.org**
Website: **www.cwgcommonground.org**

Staff: Patrick Scott, Executive Director
Sandra Dolan, Communications Director
Jeanne Gagnon, Office Manager
Wayne Warner, Administrative Assistant

The CWG greatly appreciates the time and effort you have taken to participate in this very important process, and all of your comments are welcome.

Thank you.

Consultation Process

Spring 1998 Consultation Process Begins	Spring-Summer 1998 Information Meetings	Fall 1998 Community Workshops/ Meetings	Fall 1998 Feedback Meetings	Fall/Winter 1998/1999 Ongoing Activities	Future Plebiscite
• release of information • ongoing communicati on	• visits by CWG members and staff to communities to provide information and build understandin g • presentations to summer Assemblies	• workshops and meetings to obtain input on proposed approaches and models	• report back on input provided on proposed approaches and models	• constitutional conference • Aboriginal Forum • proposed constitutional package and CSGA	• ratification of proposed constitutional package by all eligible western NWT residents

Questionnaire

1. (a) Are there any other key issues which should be considered in the development of a new constitution for the western territory?

   (b) Please describe these other key issues and explain why they are important?

2. (a) Based upon the information provided, which of the two proposed approaches do you prefer?

   (b) Why do you prefer this approach?

3. (a) Based upon the information provided, which of the four proposed models do you prefer? If you prefer none of the models, please go to Question 3(c).

   (b) Why do you prefer this model?

   (c) Is there another model you would suggest? How would it work?

4. Do you have any other comments or suggestions for the CWG regarding the development of a new constitution for the western territory?

To assist the CWG with its review and assessment of the responses, please provide the name of the community where you live.

_____

Community Name

If you wish to receive future newsletters and/or information regarding community workshops, please provide your name, mailing address, telephone number, fax number and e-mail below.

Name: _____

Mailing Address: _____

Telephone: _____

Fax: _____

E-mail: _____

Appendix 1

Examples of Self Government Agreements

Appendix 1 provides examples of some settled self government negotiations. Other settled negotiations include the James Bay Cree. Examples of negotiations still underway include the Labrador Inuit.

Nisga'a Self Government Agreement in Principle

The Nisga'a main government institutions are a central government and four village governments. These governments emphasize exclusive Nisga'a representation and services for Nisga'a on Nisga'a land. Their lands encompass the four Nisga'a villages and include surface and subsurface rights. Three Nisga'a urban locals have also been established in larger centres outside Nisga'a lands. The central Nisga'a government represents the interests of the Nation in relationships with the federal and provincial governments.

The Nisga'a have signed an agreement in principle that could give them the power to enact laws on a variety of subject matters. Their authority would vary depending on the subject matter. All Nisga'a laws are subject to the *Charter of Rights and Freedoms*. Some Nisga'a laws that are subject only to the *Charter of Rights* include matters such as expenditure of funds; establishment of boards or agencies (such as health or education); creation of village governments or urban locals; and the preservation of language and culture.

Some laws are subject to federal or provincial standards, such as those regulating Nisga'a lands for public safety; preservation of language and culture; protection of the environment; education; child and family services, including adoption of Nisga'a children. Nisga'a laws, in the areas of environmental standards, management of Nisga'a forest resources and building standards, can exceed federal and provincial standards. There are also some areas where federal and provincial laws continue to apply on Nisga'a lands, such as the *Criminal Code*, sale of wildlife meat and federal responsibility for conservation of fisheries. The agreement also states that fiscal agreements do not receive constitutional protection.

Yukon First Nations

The four Yukon First Nation Self Government Agreements are based on the Umbrella Final Agreement of the Council of Yukon Indians. The Self Government Agreements establish the First Nations as legal entities with the power to enter into contracts, acquire land and to form corporations. Title relating to subsurface rights is included in nearly all of the lands in the settlement area.

The First Nation governments can enact laws relating to internal management of certain rights and benefits received under the claim. These powers can be concurrent with federal and territorial legislation but would apply exclusively to First Nation citizens, regardless of where they live in the Yukon Territory. This authority includes program and services of cultural, spiritual and First Nation languages; health care except for licensing of facilities that are not located on settlement lands; adoption by and of citizens; guardianship and custody of First Nation children; administration of estates; solemnization of marriages; and other matters.

The Yukon First Nations also have the power to enact laws of a local or private nature on settlement lands which apply to all residents. These powers are more land based and include matters such as municipal type by-laws, pollution control, public health, and the transportation of dangerous goods. As well, they include management and protection responsibilities for natural resources, fish and wildlife habitat and hunting, trapping and fishing regulations; and the administration of justice.

The self government agreements do not limit the jurisdiction of the Federal or Yukon Courts. A First Nation government can delegate its powers, including legislative powers, to another public body. A First Nation can also enter into agreements to receive powers by delegation.

Appendix 2

Comparison of Approaches

EFFECT OF THE APPROACHES ON:	GOVERNMENT TO GOVERNMENT	A COMBINED GOVERNMENT GOVERNMENT
Aboriginal Self Government Agreements	• will include Aboriginal governments and **can delegate** authority to implement the inherent right • will establish some relationships with the territorial government and federal government	• will include Aboriginal governments and **can delegate** authority to implement the inherent right • will establish some relationships with the territorial government and federal government
Bringing People and Government Together	• focus is on consultation, coordination and cooperation ***among*** **Aboriginal and public governments and between the territorial government and Aboriginal governments**	• focus is on consultation, coordination and cooperation ***within*** **a single combined territorial government**
Role of the Legislative Branch of the Territorial Government to Serve All	• will make laws for all western NWT residents • laws must respect land claim, treaty and Aboriginal self government agreements • may **provide mechanisms to enhance consultation, coordination and cooperation among governments**	• will make laws for all western NWT residents • laws must respect land claim, treaty and Aboriginal self government agreements • may **include some powers to make laws with respect to Aboriginal lands, affairs and funds**
Guaranteed Aboriginal Representation	• may require a guarantee to ensure representation **by** Aboriginal peoples in the Legislative Assembly **in the event of future changes in the population** • **all MLAs, Aboriginal and non-Aboriginal, will have the same status**	• **will** require a guarantee **for** representation **for** Aboriginal peoples **or governments** in the Legislative Assembly **and Cabinet** • **Aboriginal representatives form a recognized entity which has a guaranteed role in the Legislative Assembly**
Western Development and Aboriginal Self Government	• processes are separate but related • Aboriginal self government negotiations take into account that the constitution **will ensure consultation, coordination and cooperation through arrangements and agreements among governments** • the constitutional development process will take into account that Aboriginal governments will have the authority to implement the inherent right	• processes are separate but related • Aboriginal self government negotiations take into account that the constitution will **provide for bringing Aboriginal government and the public government together within a single combined territorial government** • the constitutional development process will take into account that Aboriginal governments will have the authority to implement the inherent right
Program and Services Delivery	• law making authority • multi-service provider • set standards • financial arrangements	• law making authority • multi services provider • set standards together • financial arrangements

Appendix 3

Glossary

Aboriginal Peoples

The Constitution defines Aboriginal Peoples as including the Indian, Inuit and Métis people of Canada. In the Western NWT, Aboriginal Peoples/First Nations include the Inuvialuit, Gwich'in, Sahtu Dene and Métis, Dogrib, Treaty 8 Nation of Akaitcho Territory, North Slave Métis, South Slave Métis and Deh Cho Dene and Métis.

Aboriginal Peoples Inherent Right of Self Government

Before the arrival of European settlers, Aboriginal peoples governed themselves according to longstanding traditions, practices and beliefs. This is what the inherent right of self government means. The federal government has recognized Aboriginal peoples inherent right of self government and that it will be implemented through negotiated agreements that include Aboriginal governments.

Aboriginal Government

The *Constitution of Canada* recognizes and affirms the Aboriginal and treaty rights of the Indian, Inuit and Métis people of Canada. These Aboriginal rights include land claim, treaty and self government rights. Aboriginal self government agreements will have the greatest affect on the western territory because they will recognize Aboriginal governments at the community and regional levels. In some cases, Aboriginal governments may only include Aboriginal peoples, while in other cases, Aboriginal governments may include Aboriginal and non-Aboriginal people.

Aboriginal Summit

The Western NWT Aboriginal Summit was created in 1995 and is a forum where the political leaders of the Dene Nation, Métis Nation, Inuvialuit and most of the regional or tribal councils meet to discuss self government issues. The Deh Cho First Nations have chosen not to participate in the Aboriginal Summit.

Companion Self Government Agreement (CSGA)

A new constitution could indicate how the land claim, treaty and self government rights of Aboriginal peoples would be recognized and how these rights would be implemented by the territorial government. A CSGA between the federal and territorial governments and Aboriginal peoples and their governments may be developed to provide a further guarantee that the Aboriginal rights reflected in the new constitution will not be amended without the consent of Aboriginal peoples. The Aboriginal peoples inherent right of self government could also be recognized in the CSGA.

Commission for Western Constitutional Development

The CWCD, or the Bourque Commission, was established in 1991 with a mandate to consult with western NWT residents and provide a report on a constitution for a new western territory. The Bourque Commission reported back to western political leaders in April 1992. Its report was used by the CWG in preparing for the current constitutional process.

Constitutional Development Steering Committee (CDSC)

The CDSC was established in 1992 to continue the western constitutional development process. One of its major accomplishments was a January 1995 constitutional conference where western NWT leaders and community residents considered and made recommendations on the process and direction of both western constitutional development and Aboriginal self government. The CDSC was replaced by the Constitutional Working Group in 1996.

Constitution of Canada - Charter of Rights and Freedoms

The *Charter of Rights and Freedoms* is a part of the *Constitution of Canada*. The *Charter* says that everyone has the following fundamental freedoms: freedom of conscience and religion, freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication; freedom of peaceful assembly; and freedom of association. The *Charter* also identifies a number of fundamental mobility, legal, equality, language and minority education rights. Democratic rights identified in the *Charter* state that: "every citizen of Canada has the right to vote in any election of members of the House of Commons or of a Legislative Assembly and to be qualified for membership therein."

Division (of the Northwest Territories)

The process for dividing the existing Northwest Territories into two new territories, Nunavut in the east and a yet to be named new territory in the west. The official date for the creation of two new territories is April 1, 1999. For the western territory, division presents an opportunity to develop a new constitution and system of government which recognizes and helps to implement the inherent right of self government.

Executive Council

The Executive Council, or Cabinet, of the Government of the Northwest Territories (GNWT) includes the Premier and Ministers who are chosen by the Legislative Assembly. The Executive Council manages the GNWT budget and administration and recommends laws for consideration and approval by the Legislative Assembly. The territorial government in a new western territory will continue to have an Executive Council.

Ex Officio

The Constitutional Working Group (CWG) is composed of official representatives from the Aboriginal Summit and the Western Caucus of the Legislative Assembly. It also includes *ex officio* members representing the Western Caucus of the NWT Association of Municipalities, the Native Women's Association of the NWT and the Status of Women Council of the NWT. Representatives of these organizations participate fully in all CWG meetings and the development of proposals for western constitutional development. However, *ex officio* members are not able to make or vote on formal motions.

Government of the Northwest Territories (GNWT)

The GNWT is the institution of government for the NWT as it currently exists. The GNWT includes the Executive Council and administration or bureaucracy. The GNWT, its authority and some elements of its organization are set out in the *Northwest Territories Act*, which is an Act of the Parliament of Canada.

Plebiscite

A direct vote by all eligible voters to decide upon a question of importance to the general public. The results of the vote are not binding on governments. The results of a plebiscite on a constitution for the new western territory will not be binding on the federal government, but its results will help to determine how the federal government responds. The NWT's *Plebiscite Act* has a three year residency requirement.

Constitutional Working Group